



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Shelburne H. Glover  
County Attorney  
Marion County  
Jefferson, Texas

Dear Sir:

Opinion Number O-4618  
Under the provisions of H.B. #6,  
S.B. 6, Subsection (h) Special Ses-  
sion, 47th Leg., is it mandatory  
that the funds allocated by the State  
to Marion County be applied on the  
maturing interest and principal of the  
bonded indebtedness or may the county  
pay such maturing installments of the  
bond issue from its ad valorem taxes  
and use the State funds for the con-  
struction or improvement of additional  
County Lateral Roads?

We acknowledge receipt of your opinion request of  
recent date and quote from your letter as follows:

"Marion County has outstanding bonded indebt-  
edness, the proceeds of which were used in con-  
structing and improving State designated high-  
ways and Lateral Roads in the approximate  
proportions of 68% and 32%. To the extent of  
the 68% such bonds are eligible obligations en-  
titled to participate in the County and Road  
District Highway Fund under the Act. Such bonds  
to the extent only of 32% thereof may participate  
in the Lateral Road Funds.

"The county has made a tax levy sufficient to  
meet the interest and principal maturing next year

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on the 38% chargeable to the Lateral Road Fund Account. Assuming there will be funds available to the county from the State Lateral Road Account mentioned in the Assumption Act, there will result a surplus of funds necessary to pay the maturing installments of interest and principal on the 38% of the bond issue above mentioned.

"In view of the above quoted provisions of Section 6, Subsection (h) of the Act, is it mandatory that the funds allocated by the State to Marion County be applied on the maturing interest and principal of the bonded indebtedness or may the county pay such maturing installments of the bond issue from its ad valorem taxes and use the State funds for the construction or improvement of additional County Lateral Roads?"

House Bill #6, Acts of the First Called Session, Forty-seventh Legislature, commonly referred to as the "Road Bond Assumption Act", provides in Section 6, Subsection (h) as follows:

"The moneys allocated to each county from the lateral road account shall be used by said county first for paying the principal, interest, and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants, and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring right of ways for State designated highways, it being the intention of the Legislature to designate and set apart sufficient money to pay off and discharge said outstanding obligations incurred for right of way acquisition. The board shall require from each county a sworn statement of the outstanding right of way indebtedness incurred on State designated highways and in the event a false statement is furnished the board by any county, or where any county fails or refuses to file a report, then such

county shall be denied any benefits under this Section; it being the duty of the board before distributing any funds to any county under this Section where such county submits a report that it has no right of way indebtedness, or where said report is vague or indefinite, to audit and determine the correctness of such report. Funds remaining in the Lateral Road Fund of any county after the payment of said right of way obligations shall be used by the county for paying the maturing principal, interest, and sinking fund requirements, due by the county in that fiscal year on bonds, warrants, or other evidences of indebtedness which were legally issued by such county or road districts prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads. Payment to be made ratably upon the principal and interest on the maturing road bond obligations of said county for such fiscal years. Any funds remaining in the Lateral Road Fund of any county after the payment of said principal, interest, and sinking fund requirements due or maturing in that fiscal year on bonds or warrants which were legally issued by such county or road district prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, may be used by the county under direction of the Commissioners Court for any one or all of the following purposes: (a) for the acquisition of right of ways for county lateral roads and for the payment of legal obligations incurred therefor prior to January 2, 1939, (b) for the construction or improvement of county lateral roads, (c) for the purpose of supplementing funds appropriated by the United States Government for Works Progress Administration highway construction, Public Works Administration highway construction, and such other grants of Federal funds as may be made available to the counties of this State for county lateral road construction, and (d) for the purposes of cooperating with the State Highway Department and the Federal Government in the construction of farm-to-market roads."

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After a careful reading of House Bill #6, and particularly Section 6, Subsection (h), we interpret the law to mean, that moneys allocated to each county from the Lateral Road Account shall be used by said county, first, for paying the principal, interest and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring rights-of-way for State designated highways; second, funds remaining in the Lateral Road Fund of any county, after the payment of said right-of-way obligations, shall be used by the county for paying the maturing principal, interest and sinking fund requirements due by the county in that fiscal year on bonds, warrants or other evidences of indebtedness issued prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvements of lateral county roads; third, any funds remaining in the Lateral Road Fund of any county after the payment of said principal, interest and sinking fund requirements, due or maturing in that fiscal year on bonds or warrants legally issued prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, may be used by the county under direction of the Commissioners' Court "(b) for the construction or improvement of county lateral roads".

The sinking fund which you mention in your letter can only be used to pay interest and principal requirements of the bonded indebtedness for which the tax levy was made. We are of the opinion that if the Commissioners' Court elects to pay the interest and principal of all bonds and warrants maturing during the current fiscal year out of said sinking fund, the money in the Lateral Road Fund could be used for the construction and improvement of county lateral roads, because all principal and interest payments would have been met for the current fiscal year and there would be funds remaining in the Lateral Road Fund which could be used "for the construction or improvement of county lateral roads". However, all principal and interest payments maturing in the current fiscal year must be paid as provided in Section 6, Subsection (h), *supra*, before any of the funds remaining in the Lateral Road Fund may be spent for the construction and improvements of additional county lateral roads.

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Trusting that this answers your question, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY *Claud O. Boothman*  
Claud O. Boothman  
Assistant

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APPROVED JUL 3, 1942

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

